

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
NORTHEASTERN DIVISION**

CARL HUTTO,)	
)	
Petitioner,)	
)	
v.)	5:10-cv-2308-IPJ-JEO
)	
WARDEN LEEPOSEY DANIELS and)	
THE ATTORNEY GENERAL OF)	
THE STATE OF ALABAMA,)	
)	
Respondents.)	

MEMORANDUM OPINION

On August 25, 2010, the petitioner filed a form application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 with this court. He challenges the validity of his 1987 murder conviction. In accordance with the usual practices of this court, the petition was referred to a magistrate judge for a preliminary review and recommendation.

The magistrate judge entered an Order requiring the respondents to appear and show cause why the petitioner's requested relief should not be granted. The respondents appeared and asserted that the petition was due to be dismissed as a successive petition. The petitioner responded with a motion to dismiss his petition without prejudice to seek permission from the Eleventh Circuit to file a successive petition. (Doc. 9). Upon consideration, the court finds that the petitioner's motion to dismiss is due to be granted and this matter dismissed without prejudice.

DONE, this the 11th day of May 2011.



INGE PRYTZ JOHNSON
U.S. DISTRICT JUDGE